where this distinction is made, the law of champerty can prove no great obstacle to an attorney bent upon carrying out a transaction of this nature.

The tendency of the courts in this country is to relax the common law doctrine of champerty for the reason that the peculiar conditions of society which gave rise to the doctrine have changed. Some states, recognizing this change in social conditions, have adopted the rule in a modified form,[10] while other states have absolutely repudiated it, and treat no contract as champertous unless made so by statute. These States are Arkansas, California, Connecticut, Delaware, Idaho, Maryland, Michigan, New Jersey, New York, Texas, and West Virginia.[11]

In California, the subject is covered by two statutes. Section 1021 of the Code of Civil Procedure leaves the measure and mode of compensation of attorneys to agreement between the parties. Section 161 of the Penal Code makes it a misdemeanor for an attorney to buy a thing in action with intent to bring suit thereon. In construing the latter section the cases hold that an agreement which is not "contra bonos mores" or against public policy is valid. But the standard of public policy is not that set by the common law under its doctrines of champerty. In order to violate the section of the Penal Code, the attorney must solicit the bringing of the action as well as acquire an interest in the thing of action.[12] W. H. S.

Contracts — Mistake.— In the case of Cutting v. Peterson[1] the defendant in August, 1908, contracted to purchase canned goods from plaintiff but wished to be guaranteed against the prices of the California Fruit Canners' Association, which usually determine the market. These prices had for years been published in printed form to the trade. It was also the custom of the California Fruit Canners' Association to make special prices to certain firms, but it was not the intention of the defendant to guarantee against such special prices. The contract was therefore phrased as follows: "the above prices guaranteed against the California Fruit Canners' Association opening printed prices for 1908." The Association did not publish any opening printed prices that year but gave out their prices upon application; so, in effect, they established the market price as in former years. De-

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[10] Browne v. Bigne (1891), 21 Ore. 260; 28 Am. St. Rep. 752, 14 L. R. A. 745, 28 Pac. 11; Gilman v. Jones (1889), 87 Ala. 702, 5 So. 785; Newkirk v. Cone (1857), 18 Ill. 449.

[11] Lytle v. State (1857), 17 Ark. 608; Mathewson v. Fitch (1863), 22 Cal. 86, 8 Cyc. 855; Richardson v. Rawland (1873), 40 Conn. 565.

[12] Tuller v. Arnold (1893), 98 Cal. 522, 28 Pac. 863; Bergin v. Frisbie (1899) 125 Cal. 169; 57 Pac. 784; Bulkeley v. Bank of California (1885), 68 Cal. 80; Ballard v. Carr (1874), 48 Cal. 75; Howard v. Throckmorton (1874) 48 Cal. 482.

[1] (Oct. 2, 1912), 44 Cal. Dec. 481, 127 Pac. 163.

fendant paid for the goods in accordance with the market price and plaintiff sued for the balance. The defendant prayed for a revision of the contract by the substitution of "general market prices" for "opening printed prices." [2] The trial court refused relief on the ground that no mistake had been made as every word used by the parties was intended by them. The Supreme Court in bank reversed this decision and ordered judgment for the defendant. It may be questioned whether the Supreme Court is correct in holding that there is a mistake where the parties are disappointed in their expectation of the occurrence of a future event. No authority is cited by the court. The California Civil Code confines mistake to an unconscious ignorance or forgetfulness of a fact past or present.[3] In thus limiting the scope of mistake the code is in accord with what is probably the better view.[4] It is suggested that the decision might be rested on the ground that an impossibility has arisen to the exact performance of the contract, but that the object of the contract is not impossible. The testimony shows that in using the words "opening printed prices" the parties were stating the most convenient evidence of the market price in place of the market price itself. In limiting plaintiff's recovery to the market price the court is not making a contract for the parties but is enforcing the contract as made by them, subordinating a particular intent to the general intent where the particular is no longer possible.[5]

H. H. P.

Criminal Law — Homicide — Included Offenses — Former Jeopardy. —A defendant was recently tried in the State of Washington on the charge of murder in the first degree. The evidence clearly showed a premeditated homicide committed by the defendant in revenge for the violation of the sanctity of his home. The court instructed the judge on the three degrees of homicide, and the jury found the defendant guilty of manslaughter. On appeal the Supreme Court reversed the verdict but ordered the defendant retried for first degree murder.[1]

The contention of the State in support of the instructions given covering the three degrees of homicide was, in brief, that the greater includes the less, and therefore a charge of murder includes a charge of manslaughter; and that moreover, since the jurors are the sole judges of the facts, the court cannot say as a matter of law that there is no evidence to establish any of the lesser or included crimes. The Supreme Court, however, refused to allow this argument, holding that a mere inclusion in law of a lesser degree does not involve an inclu-

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[2] Pursuant to Secs. 3399, 3401 and 3402 of the Civil Code of Cal.

[3] Cal. Civil Code, Secs. 3399, 1576 and 1577.

[4] Anson on Contracts (8th ed.), p. 157; Kerr on Fraud and Mistake (3rd ed.), p. 440.

[5] Civil Code of Cal., Secs. 1598, 1640, 1643 and 1650.

[1] State v. Ash (1912), 68 Wash. 194, 122 Pac. 995.